

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:DEM:BAL:TL-N-1972-99
SMJefferson\vsb

VIA EXPRESS MAIL

date: **MAR 23 1999**

to: Office of Assistant Chief Counsel (Employee Benefits & Exempt Organizations)
CC:EBEO

Office of Assistant Chief Counsel (Field Service)
CC:DOM:FS

from: Assistant District Counsel, Delaware-Maryland

subject: [REDACTED] 401(k) Retirement Plan

Request Field Service Advice

EXPEDITE: EARLIEST STATUTE EXPIRES [REDACTED]

FORM 872--DISQUALIFICATION OF TRUST AND SUCCESSOR PLAN AND
SUCCESSOR TRUSTEE

ISSUES

1. Which entity names ^{shall} appear as taxpayer and trustee on the Form 872 when various retirement plans have merged subsequent to the years under audit?
2. If the examination may result in the disqualification of the Trust, must the calendar year statute be protected or may the Form 872 still refer to the fiscal year of the Plan?

FACTS

The [REDACTED] 401(k) Retirement Plan is currently under audit and the EP agent assigned the case is Stacy Smith, who has a post of duty in [REDACTED]. According to Mr. Smith, the examination of the Plan may result in disqualification of the Trust. The Schedule P, attached to the Form 5500, was filed for the year ending June 30, [REDACTED] on April 16, [REDACTED], pursuant to an extension request. Therefore, the statute of limitations for the Trust will expire on April 17, [REDACTED]. The Schedule P, attached to the Form 5500 for the year ending June 30, [REDACTED] was timely filed, sometime in January of [REDACTED]. Since the Trust will become taxable, it is automatically converted to a calendar year.

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Subsequent to the years under audit, the [REDACTED] 401(j) Retirement Plan was merged into the [REDACTED] Retirement and Savings Trust. Moreover, the Trustee of the Plan was changed from [REDACTED] to [REDACTED]. A copy of the merger agreement is attached hereto.

ANALYSIS

We have conferred with Donna Palmer, Michael Roach and Don Parkinson on the issues presented and it is our understanding that two consents have to be executed, one for the period of July 1, [REDACTED] to December 31, [REDACTED] and the other for the entire [REDACTED] year, although the Trust has not yet been disqualified and the examination is still being conducted.

It is also our understanding that the successor Trust should be named as the taxpayer in the consent and that the successor Trustee should execute the consent.

Copies of the two Forms 872 and a Form 56 received from Mr. Smith on March 22, [REDACTED] are attached hereto. Since the expiration of the statute of limitations is imminent, please advise us if the documents are not adequate to extend the statute.

If you have any questions concerning the above, please feel free to call Sandra M. Jefferson at (410) 962-3136.

ELIZABETH S. HENN
Assistant District Counsel

By:

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SANDRA M. JEFFERSON
Senior Attorney

Enclosures:
As Stated